

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

CHAPTER 60
VIRGINIA STORMWATER MANAGEMENT PROGRAM
(VSMP) PERMIT REGULATIONS

Part I

4VAC50-60-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed-specific values for the average land cover condition based upon 4VAC50-60-110.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"Co-permittee Co-operator" means ~~a permittee~~ an operator to a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (~~DMR~~)" or "DMR" means the form supplied by the department, or an equivalent form developed by the ~~permittee~~ operator and approved by the board, for the reporting of self-monitoring results by ~~permittees~~ operators.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP program.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a publicly owned treatment works (POTW)".

~~"Individual control strategy" means a final VSMP permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.~~

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the ~~latest~~ 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;

- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

- c. The quantity and nature of pollutants discharged to surface waters;

- d. The nature of the receiving surface waters; and

- e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

219 jurisdictional, watershed, or other appropriate basis that includes one or more of
220 the systems described in this definition.

221 "Linear development project" means a land-disturbing activity that is linear in nature
222 such as, but not limited to, (i) the construction of electric and telephone utility lines, and
223 natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication
224 facilities and other related structures of a railroad company; and (iii) highway
225 construction projects.

226 "Local stormwater management program" or "local program" means a statement of
227 the various methods employed by a locality to manage the quality and quantity of runoff
228 resulting from land-disturbing activities and shall include such items as local ordinances,
229 permit requirements, policies and guidelines, technical materials, inspection,
230 enforcement, and evaluation consistent with the Act and this chapter. The ordinance
231 shall include provisions to require the control of after-development stormwater runoff rate
232 of flow, the proper maintenance of stormwater management facilities, and minimum
233 administrative procedures.

234 "Locality" means a county, city, or town.

235 "Major facility" means any VSMP facility or activity classified as such by the regional
236 administrator in conjunction with the board.

237 "Major modification" means, for the purposes of this chapter, the modification or
238 amendment of an existing permit before its expiration that is not a minor modification as
239 defined in this regulation.

240 "Major municipal separate storm sewer outfall (or major outfall)" means a municipal
241 separate storm sewer outfall that discharges from a single pipe with an inside diameter
242 of 36 inches or more or its equivalent (discharge from a single conveyance other than
243 circular pipe which is associated with a drainage area of more than 50 acres); or for
244 municipal separate storm sewers that receive stormwater from lands zoned for industrial
245 activity (based on comprehensive zoning plans or the equivalent), with an outfall that
246 discharges from a single pipe with an inside diameter of 12 inches or more or from its
247 equivalent (discharge from other than a circular pipe associated with a drainage area of
248 two acres or more).

249 "Manmade" means constructed by man.

250 "Maximum daily discharge limitation" means the highest allowable daily discharge.

251 "Maximum extent practicable" or "MEP" means the technology-based discharge
252 standard for municipal separate storm sewer systems established by CWA §402(p).
253 MEP is achieved, in part, by selecting and implementing effective structural and
254 nonstructural best management practices (BMPs) and rejecting best management
255 practices (BMPs) only when the best management practices (BMPs) would not be
256 technically feasible or the cost would be prohibitive and unreasonable. MEP is an
257 iterative standard, which evolves over time as urban runoff management knowledge
258 increases. As such, the operator's MS4 program must continually be assessed and
259 modified to incorporate improved programs, control measures, best management
260 practices (BMPs), etc. to maintain compliance with water quality standards.

261 "Medium municipal separate storm sewer system" means all municipal separate
262 storm sewers that are either:

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

- 263 1. Located in an incorporated place with a population of 100,000 or more but less
264 than 250,000 as determined by the ~~latest~~ 1990 decennial census by the Bureau
265 of Census (40 CFR Part 122 Appendix G (2000));
- 266 2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except
267 municipal separate storm sewers that are located in the incorporated places,
268 townships or towns within such counties;
- 269 3. Owned or operated by a municipality other than those described in subdivision
270 1 or 2 of this definition and that are designated by the board as part of the large
271 or medium municipal separate storm sewer system due to the interrelationship
272 between the discharges of the designated storm sewer and the discharges from
273 municipal separate storm sewers described under subdivision 1 or 2 of this
274 definition. In making this determination the board may consider the following
275 factors:
- 276 a. Physical interconnections between the municipal separate storm sewers;
- 277 b. The location of discharges from the designated municipal separate storm
278 sewer relative to discharges from municipal separate storm sewers described
279 in subdivision 1 of this definition;
- 280 c. The quantity and nature of pollutants discharged to surface waters;
- 281 d. The nature of the receiving surface waters; or
- 282 e. Other relevant factors.
- 283 4. The board may, upon petition, designate as a medium municipal separate
284 storm sewer system, municipal separate storm sewers located within the
285 boundaries of a region defined by a stormwater management regional authority
286 based on a jurisdictional, watershed, or other appropriate basis that includes one
287 or more of the systems described in subdivisions 1, 2 and 3 of this definition.
- 288 "Minor modification" means, for the purposes of this chapter, minor modification or
289 amendment of an existing permit before its expiration as specified in 4VAC50-60-640.
290 Minor modification for the purposes of this chapter also means other modifications and
291 amendments not requiring extensive review and evaluation including, but not limited to,
292 changes in EPA promulgated test protocols, increasing monitoring frequency
293 requirements, changes in sampling locations, and changes to compliance dates within
294 the overall compliance schedules. A minor permit modification or amendment does not
295 substantially alter permit conditions, substantially increase or decrease the amount of
296 surface water impacts, increase the size of the operation, or reduce the capacity of the
297 facility to protect human health or the environment.
- 298 "Municipal separate storm sewer" means a conveyance or system of conveyances
299 otherwise known as a municipal separate storm sewer system, including roads with
300 drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade
301 channels, or storm drains:
- 302 1. Owned or operated by a federal, state, city, town, county, district, association,
303 or other public body, created by or pursuant to state law, having jurisdiction or
304 delegated authority for erosion and sediment control and stormwater
305 management, or a designated and approved management agency under §208 of
306 the CWA that discharges to surface waters;
- 307 2. Designed or used for collecting or conveying stormwater;

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under §306 of the CWA that are applicable to such source; or

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

352 2. After proposal of standards of performance in accordance with §306 of the
353 CWA that are applicable to such source, but only if the standards are
354 promulgated in accordance with §306 of the CWA within 120 days of their
355 proposal.

356 "Nonpoint source pollution" means pollution such as sediment, nitrogen and
357 phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be
358 pinpointed but rather are washed from the land surface in a diffuse manner by
359 stormwater runoff.

360 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average
361 amount of a particular pollutant measured in pounds per year, delivered in a diffuse
362 manner by stormwater runoff.

363 "Operator" means the owner or operator of any facility or activity subject to regulation
364 under the VSMP program. In the context of stormwater associated with a large or small
365 construction activity, operator means any person associated with a construction project
366 that meets either of the following two criteria: (i) the person has direct operational control
367 over construction plans and specifications, including the ability to make modifications to
368 those plans and specifications or (ii) the person has day-to-day operational control of
369 those activities at a project that are necessary to ensure compliance with a stormwater
370 pollution prevention plan for the site or other permit conditions (i.e., they are authorized
371 to direct workers at a site to carry out activities required by the stormwater pollution
372 prevention plan or comply with other permit conditions).

373 "Outfall" means, when used in reference to municipal separate storm sewers, a point
374 source at the point where a municipal separate storm sewer discharges to surface
375 waters and does not include open conveyances connecting two municipal separate
376 storm sewers, or pipes, tunnels or other conveyances which connect segments of the
377 same stream or other surface waters and are used to convey surface waters.

378 "Overburden" means any material of any nature, consolidated or unconsolidated,
379 that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface
380 materials that are not disturbed by mining operations.

381 "Owner" means the Commonwealth or any of its political subdivisions including, but
382 not limited to, sanitation district commissions and authorities, and any public or private
383 institution, corporation, association, firm or company organized or existing under the
384 laws of this or any other state or country, or any officer or agency of the United States, or
385 any person or group of persons acting individually or as a group that owns, operates,
386 charters, rents, or otherwise exercises control over or is responsible for any actual or
387 potential discharge of sewage, industrial wastes, or other wastes to state waters, or any
388 facility or operation that has the capability to alter the physical, chemical, or biological
389 properties of state waters in contravention of §62.1-44.5 of the Code of Virginia, the Act
390 and this chapter.

391 "Percent impervious" means the impervious area within the site divided by the area
392 of the site multiplied by 100.

393 "Permit" means an approval issued by the permit-issuing authority for the initiation of
394 a land-disturbing activity or for stormwater discharges from an MS4. Permit does not
395 include any permit that has not yet been the subject of final permit-issuing authority
396 action, such as a draft permit or a proposed permit.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

"Permit-issuing authority" means the board, the department, or a locality that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, firm, association, joint venture, public or private or municipal corporation, trust, estate, state, municipality, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any a state, governmental body (including but not limited to a federal, state, or local entity), any interstate or governmental body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

443 by the State Water Control Board, are "pollution" for the terms and purposes of this
444 chapter.

445 "Post-development" refers to conditions that reasonably may be expected or
446 anticipated to exist after completion of the land development activity on a specific site or
447 tract of land.

448 "Pre-development" refers to the conditions that exist at the time that plans for the
449 land development of a tract of land are approved by the plan approval authority. Where
450 phased development or plan approval occurs (preliminary grading, roads and utilities,
451 etc.), the existing conditions at the time prior to the first item being approved or permitted
452 shall establish pre-development conditions.

453 "Privately owned treatment works (PVOTW)" means any device or system that is (i)
454 used to treat wastes from any facility whose operator is not the operator of the treatment
455 works and (ii) not a POTW.

456 "Proposed permit" means a VSMP permit prepared after the close of the public
457 comment period (and, when applicable, any public hearing and administrative appeals)
458 that is sent to EPA for review before final issuance. A proposed permit is not a draft
459 permit.

460 "Publicly owned treatment works (POTW)" means a treatment works as defined by
461 §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the
462 CWA). This definition includes any devices and systems used in the storage, treatment,
463 recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It
464 also includes sewers, pipes, and other conveyances only if they convey wastewater to a
465 POTW treatment plant. The term also means the municipality as defined in §502(4) of
466 the CWA, that has jurisdiction over the indirect discharges to and the discharges from
467 such a treatment works.

468 "Recommencing discharger" means a source that recommences discharge after
469 terminating operations.

470 "Regional administrator" means the Regional Administrator of Region III of the
471 Environmental Protection Agency or the authorized representative of the regional
472 administrator.

473 "Regional (watershed-wide) stormwater management facility" or "regional facility"
474 means a facility or series of facilities designed to control stormwater runoff from a
475 specific watershed, although only portions of the watershed may experience land
476 development.

477 "Regional (watershed-wide) stormwater management plan" or "regional plan" means
478 a document containing material describing how runoff from open space, existing
479 development and future planned development areas within a watershed will be
480 controlled by coordinated design and implementation of regional stormwater
481 management facilities.

482 "Revoked permit" means, for the purposes of this chapter, an existing permit that is
483 terminated by the board before its expiration.

484 "Runoff coefficient" means the fraction of total rainfall that will appear at a
485 conveyance as runoff.

486 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged
487 across the land surface or through conveyances to one or more waterways.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated planning area in which the land development project is located.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

534 concern or, for nonimpaired waters that do not require TMDLs, an equivalent
535 analysis that determines allocations for small construction sites for the
536 pollutant(s) of concern or that determines that such allocations are not needed to
537 protect water quality based on consideration of existing in-stream concentrations,
538 expected growth in pollutant contributions from all sources, and a margin of
539 safety. For the purpose of this subdivision, the pollutant(s) of concern include
540 sediment or a parameter that addresses sediment (such as total suspended
541 solids, turbidity or siltation) and any other pollutant that has been identified as a
542 cause of impairment of any water body that will receive a discharge from the
543 construction activity. The operator must certify to the board that the construction
544 activity will take place, and stormwater discharges will occur, within the drainage
545 area addressed by the TMDL or equivalent analysis.

546 2. Any other construction activity designated by the either the board or the EPA
547 regional administrator, based on the potential for contribution to a violation of a
548 water quality standard or for significant contribution of pollutants to surface
549 waters.

550 "Small municipal separate storm sewer system" or "small MS4" means all separate
551 storm sewers that are (i) owned or operated by the United States, a state, city, town,
552 borough, county, parish, district, association, or other public body (created by or
553 pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes,
554 stormwater, or other wastes, including special districts under state law such as a sewer
555 district, flood control district or drainage district, or similar entity, or an Indian tribe or an
556 authorized Indian tribal organization, or a designated and approved management
557 agency under §208 of the CWA that discharges to surface waters and (ii) not defined as
558 "large" or "medium" municipal separate storm sewer systems or designated under
559 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer
560 systems in municipalities, such as systems at military bases, large hospital or prison
561 complexes, and highway and other thoroughfares. The term does not include separate
562 storm sewers in very discrete areas, such as individual buildings.

563 "Source" means any building, structure, facility, or installation from which there is or
564 may be a discharge of pollutants.

565 "State" means the Commonwealth of Virginia.

566 "State/EPA agreement" means an agreement between the regional administrator
567 and the state that coordinates EPA and state activities, responsibilities and programs
568 including those under the CWA and the Act.

569 "State project" means any land development project that is undertaken by any state
570 agency, board, commission, authority or any branch of state government, including
571 state-supported institutions of higher learning.

572 "State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of
573 the Code of Virginia.

574 "State waters" means all water, on the surface and under the ground, wholly or
575 partially within or bordering the Commonwealth or within its jurisdiction, including
576 wetlands.

577 "Stormwater" means precipitation that is discharged across the land surface or
578 through conveyances to one or more waterways and that may include stormwater runoff,
579 snow melt runoff, and surface runoff and drainage.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Virginia Stormwater Management Act, this chapter and associated guidance documents.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

670 "Total dissolved solids" means the total dissolved (filterable) solids as determined by
671 use of the method specified in 40 CFR Part 136 (2000).

672 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload
673 allocations for point sources, load allocations (LAs) for nonpoint sources, natural
674 background loading and usually a safety factor. TMDLs can be expressed in terms of
675 either mass per time, toxicity, or other appropriate measure. The TMDL process
676 provides for point versus nonpoint source trade-offs.

677 "Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) of the CWA or,
678 in the case of sludge use or disposal practices, any pollutant identified in regulations
679 implementing §405(d) of the CWA.

680 "Upset" means an exceptional incident in which there is unintentional and temporary
681 noncompliance with technology based permit effluent limitations because of factors
682 beyond the reasonable control of the ~~permittee~~ operator. An upset does not include
683 noncompliance to the extent caused by operational error, improperly designed treatment
684 facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or
685 improper operation.

686 "Variance" means any mechanism or provision under §301 or §316 of the CWA or
687 under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that
688 allows modification to or waiver of the generally applicable effluent limitation
689 requirements or time deadlines of the CWA. This includes provisions that allow the
690 establishment of alternative limitations based on fundamentally different factors or on
691 §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

692 "Vegetated filter strip" means a densely vegetated section of land engineered to
693 accept runoff as overland sheet flow from upstream development. It shall adopt any
694 natural vegetated form, from grassy meadow to small forest. The vegetative cover
695 facilitates pollutant removal through filtration, sediment deposition, infiltration and
696 absorption, and is dedicated for that purpose.

697 "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES
698 permit" means a document issued by the State Water Control Board pursuant to the
699 State Water Control Law authorizing, under prescribed conditions, the potential or actual
700 discharge of pollutants from a point source to surface waters and the use or disposal of
701 sewage sludge.

702 "Virginia Stormwater Management Act" or "Act" means Article 1.1 (§10.1-603.1 et
703 seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

704 "Virginia Stormwater Management Program (VSMP)" means the Virginia program for
705 issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing
706 permits, and imposing and enforcing requirements pursuant to the federal Clean Water
707 Act, the Virginia Stormwater Management Act, this chapter, and associated guidance
708 documents.

709 "Virginia Stormwater Management Program (VSMP) permit" means a document
710 issued by the permit-issuing authority pursuant to the Virginia Stormwater Management
711 Act and this chapter authorizing, under prescribed conditions, the potential or actual
712 discharge of pollutants from a point source to surface waters. Under the approved state
713 program, a VSMP permit is equivalent to a NPDES permit.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "Wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means narrative statements that describe water quality requirements in general terms, and numeric limits for specific physical, chemical, biological or radiological characteristics of water. These narrative statements and numeric limits describe water quality necessary to meet and maintain reasonable and beneficial uses such as swimming and, other water based recreation, public water supply and the propagation and growth of aquatic life.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

PART XV

4VAC50-60-1200. Definitions.

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the context clearly indicates otherwise, except that for the purposes of this part:

"Date brought on line" means the date when the operator determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.

~~"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.~~

~~"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.~~

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

“MS4 Program Plan” means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the director.

“Physically interconnected” means that a MS4 directly discharges to a second MS4.

4VAC50-60-1210. Purpose; delegation of authority; effective date of the permit.

A. This VSMP general permit regulation governs stormwater discharges from regulated small municipal separate storm sewer systems (regulated small MS4s) to surface waters of the Commonwealth of Virginia.

1. Unless the small MS4 qualifies for a waiver under subdivision 3 of this subsection, ~~owners~~ operators are regulated if they operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and:

a. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

b. The small MS4 is designated by the board, including where the designation is pursuant to 40 CFR Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D.

2. ~~An~~ A small MS4 may be the subject of a petition pursuant to 4VAC50-60-380 D to the board to require a VSMP permit for their discharge of stormwater. If the board determines that ~~an~~ a small MS4 needs a permit and the ~~owner~~ operator applies for coverage under this general permit, the ~~owner~~ operator is required to comply with the requirements of 4VAC50-60-1210.

3. The board may waive the requirements otherwise applicable to a regulated small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the ~~owner~~ operator may subsequently be required to seek coverage under a VSMP permit in accordance with 4VAC50-60-400 C 1 if circumstances change. (See also 40 CFR Part 123.35 (b) (2001))

4. The board may waive permit coverage if the regulated small MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

a. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the VSMP stormwater program; and

b. ~~If pollutants~~ Pollutants are discharged that have been identified as a cause of impairment of any water body to which the regulated small MS4 discharges, but stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

5. The board may waive permit coverage if the regulated small MS4 serves a population under 10,000 and meets the following criteria:

a. The ~~board~~ State Water Control Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the regulated small MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the regulated small MS4; and

d. The board has determined that future discharges from the regulated small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

B. This general permit will become effective on ~~December 9, 2002~~ July 1, 2008, and will expire five years from the effective date.

4VAC50-60-1220. Authorization to discharge.

A. Any ~~owner~~ operator governed by this general permit is hereby authorized to discharge stormwater from the regulated small MS4 to surface waters of the Commonwealth of Virginia provided that the ~~owner~~ operator files and receives acceptance of the registration statement of 4VAC50-60-1230 by the director, and files the permit ~~fee~~ fees required by Part XIII (4VAC50-60-700 et seq.) of this chapter, and provided that the ~~owner~~ operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B.

B. The ~~owner~~ operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board or board regulations or policies that prohibit such discharges.

C. Nonstormwater discharges or flows into the regulated small MS4 are authorized by this permit and do not need to be addressed in the ~~Stormwater Management~~ MS4 Program required under 4VAC50-60-1240, Section II B 3, if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or VSMP permit for nonstormwater discharges; ~~or~~

2. The individual nonstormwater discharges or flows have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit;

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

3. Nonstormwater discharges or flows in the following categories have not been identified by the ~~permittee~~ operator, State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities-; or

4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The operator shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the operator nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, a written explanation of the circumstances that prevented permit compliance shall be submitted to the department in the annual report. Circumstances beyond the control of the operator may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

D. Discharges that are excluded from obtaining a VSMP permit pursuant to 4VAC50-60-300 are exempted from the regulatory requirements of this permit.

E. Pursuant to 40 CFR Part 122.34 (c) (2001), for those portions of a regulated small MS4 that are covered under a VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the VPDES permit. Upon termination of VPDES permit coverage, discharges from previously VPDES authorized outfalls shall meet the conditions of this permit provided it has been determined by the board that an individual MS4 permit is not required.

F. Stormwater discharges from specific MS4 outfalls that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the VPDES permitting program shall obtain coverage under this VSMP general permit. The Department of Environmental Quality is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

DG. Receipt of this VSMP general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

4VAC50-60-1230. Permit application (registration statement).

A. Deadline for submitting a registration statement

~~1. Owners of regulated small MS4's designated under 4VAC50-60-1210 A 1 a, that are applying for coverage under this VSMP general permit must submit a complete Registration Statement to the department by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the board has established a schedule for phasing in permit coverage with a final deadline of March 8, 2007.~~

21. Owners Operators of regulated small MS4's MS4s designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this VSMP general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the VSMP general permit, operators of regulated small MS4s shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

B. Registration statement.

The registration statement shall include the following information:

1. The name and location (county or city name) of the regulated small MS4 for which the registration statement is submitted;

2. The name, type (city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other), and address, and telephone number of the owner operator of the regulated small MS4;

3. ~~The name(s) of the receiving water(s)~~ Hydrologic Unit Code(s) as identified in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset (available online at <http://www.dcr.virginia.gov/soil & water/hu.shtml>) currently receiving discharges or that have potential to receive discharges from the regulated small MS4;

4. ~~The best management practices (BMPs) that the owner or another entity proposes to implement for each of the stormwater minimum control measures at 4VAC50-60-1240, Section II B;~~ The estimated drainage area, in acres, served by the regulated small MS4 discharging to any impaired receiving surface waters listed in the most recent Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each such drainage area;

5. ~~The measurable goals for each of the BMPs including, as appropriate, the years in which the required actions will be undertaken, including interim milestones and the frequency of the action; and A listing of any TMDL wasteloads allocated to the regulated small MS4. This information may be found at: <http://www.deq.state.va.us/tmdl/develop.html>;~~

6. ~~The person or persons responsible for implementing or coordinating the stormwater management program. The name(s) of any regulated physically interconnected MS4s to which the regulated small MS4 discharges;~~

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

- 937 7. A copy of the MS4 Program Plan than includes:
- 938 a. A list of best management practices (BMPs) that the operator proposes to
- 939 implement for each of the stormwater minimum control measures and their
- 940 associated measurable goals pursuant to 4VAC50-60-1240, Section II B; that
- 941 includes:
- 942 i. A list of the existing policies, ordinances, schedules, inspection forms,
- 943 written procedures, and other documents necessary for best management
- 944 practice (BMP) implementation; and
- 945 ii. The individual, department, division, or unit responsible for implementing
- 946 the best management practices (BMPs);
- 947 b. The objective and expected results of each best management practice
- 948 (BMP) in meeting the measurable goals of the stormwater minimum control
- 949 measures;
- 950 c. The implementation schedule including any interim milestones for the
- 951 implementation of a proposed new best management practice (BMP); and
- 952 d. The method that will be utilized to determine the effectiveness of each best
- 953 management practice (BMP) and the MS4 Program as a whole.
- 954 8. A list of all existing signed agreements between the operator and any
- 955 applicable third parties where the operator has entered into an agreement in
- 956 order to implement minimum control measures or portions of minimum control
- 957 measures;
- 958 9. The name, address, telephone number and e-mail address of either the
- 959 principal executive officer or ranking elected official as defined in 4VAC50-60-
- 960 370;
- 961 10. The name, position title, address, telephone number and e-mail address of
- 962 any duly authorized representative as defined in 4VAC50-60-370; and
- 963 11. The following certification: "I certify under penalty of law that this document
- 964 and all attachments were prepared under my direction or supervision in
- 965 accordance with a system designed to assure that qualified personnel properly
- 966 gather and evaluate the information submitted. Based on my inquiry of the
- 967 person or persons who manage the system, or those persons directly
- 968 responsible for gathering the information, the information submitted is, to the best
- 969 of my knowledge and belief, true, accurate, and complete. I am aware that there
- 970 are significant penalties for submitting false information, including the possibility
- 971 of fine and imprisonment for knowing violations."
- 972 C. The registration statement shall be signed by the principal executive officer or
- 973 ranking elected official in accordance with 4VAC50-60-370.
- 974 D. An ~~owner~~ operator may file his its own registration statement, or the ~~owner~~
- 975 operator and other ~~municipalities or governmental entities~~ operators of regulated small
- 976 MS4s may jointly submit a registration statement. If responsibilities for meeting the
- 977 stormwater minimum control measures will be shared with other municipalities or
- 978 governmental entities, the registration statement must describe which stormwater
- 979 minimum control measures the ~~owner~~ operator will implement and identify the entities
- 980 that will implement the other stormwater minimum control measures within the area
- 981 served by the regulated small MS4.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

982 E. Where to submit. The registration statement shall be submitted to: ~~DCR's Urban~~
983 ~~Program's Section of the Division of Soil and Water Conservation.~~

984 Department of Conservation and Recreation

985 Division of Soil and Water Conservation

986 Stormwater Permitting

987 203 Governor Street, Suite 206

988 Richmond, VA 23219

989
990 **4VAC50-60-1240. General permit.**

991 Any ~~owner~~ operator whose registration statement is accepted by the director will
992 receive coverage under the following permit and shall comply with the requirements
993 therein and be subject to all applicable requirements of the Virginia Stormwater
994 Management Act (Chapter 6, Article 1.1 (§10.1-603.1 et seq.) of Title 10.1 of the Code of
995 Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations
996 (4VAC50-60).

997 General Permit No.: ~~DCR02~~ VAR04

998 Effective Date: ~~December 9, 2002~~ July 1, 2008

999 Expiration Date: ~~December 9, 2007~~ June 30, 2013

1000 GENERAL PERMIT FOR ~~STORMWATER~~ DISCHARGES OF STORMWATER FROM
1001 SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

1002 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER
1003 MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

1004 In compliance with the provisions of the Clean Water Act, as amended and pursuant
1005 to the Virginia Stormwater Management Act and regulations adopted pursuant thereto,
1006 this permit authorizes operators of small municipal separate storm sewer systems to
1007 discharge to surface waters within the boundaries of the Commonwealth of Virginia,
1008 except those waters specifically named in State Water Control Board and Virginia Soil
1009 and Water Conservation Board regulations or policies which prohibit such discharges.

1010 The authorized discharge shall be in accordance with this cover page, Section I—
1011 Discharge Authorization and Special Conditions, Section II—~~Stormwater Management~~
1012 MS4 Program and Section III—Conditions Applicable To All VSMP Permits, as set forth
1013 herein.

1014 SECTION I

1015 DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

1016 A. Coverage under this permit. During the period beginning with the date of coverage
1017 under this general permit and lasting until the permit's expiration date, the ~~permittee~~
1018 operator is authorized to discharge stormwater from the small municipal separate storm
1019 sewer system identified in the registration statement.

1020 B. Special Conditions.

1021 ~~1. Total Maximum Daily Load (TMDL) allocations. If a TMDL is approved for any~~
1022 ~~waterbody into which the small MS4 discharges, the board will review the TMDL~~
1023 ~~to determine whether the TMDL includes requirements for control of stormwater~~
1024 ~~discharges. If discharges from the MS4 are not meeting the TMDL allocations,~~
1025 ~~the board will notify the permittee of that finding and may require that the~~

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

1026 ~~Stormwater Management Program required in Section II be modified to~~
1027 ~~implement the TMDL within a timeframe consistent with the TMDL. Any such new~~
1028 ~~requirement will constitute a case decision by the board.~~

1029 ~~2. Releases of hazardous substances or oil in excess of reportable quantities.~~
1030 ~~The discharge of hazardous substances or oil in the stormwater discharge(s)~~
1031 ~~from the small MS4 shall be prevented or minimized to the maximum extent~~
1032 ~~practicable in accordance with the applicable Stormwater Management Program~~
1033 ~~required in Section II. Where a release containing a hazardous substance or oil~~
1034 ~~in an amount equal to or in excess of a reportable quantity established under~~
1035 ~~either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302~~
1036 ~~(2002) occurs during a 24-hour period, the permittee is required to notify the~~
1037 ~~Department of Environmental Quality and the Department of Conservation and~~
1038 ~~Recreation in accordance with the requirements of Section III G as soon as he~~
1039 ~~has knowledge of the discharge. In addition, the Stormwater Management~~
1040 ~~Program required under Section II of this permit must be reviewed to identify~~
1041 ~~measures to prevent the reoccurrence of such releases and to respond to such~~
1042 ~~releases, and the program must be modified where appropriate. This permit does~~
1043 ~~not relieve the permittee of the reporting requirements of 40 CFR Part 110~~
1044 ~~(2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or §62.1-44.34:19~~
1045 ~~of the Code of Virginia.~~

1046 A Total Maximum Daily Load (TMDL) approved by the State Water Control Board
1047 may include a wasteload allocation to the regulated small MS4 that identifies the
1048 pollutant for which stormwater controls are necessary for the surface waters to
1049 meet water quality standards. The pollutant identified in a wasteload allocation as
1050 of the effective date of this permit must be addressed through the measurable
1051 goals of the MS4 Program Plan. A wasteload allocation does not establish that
1052 the operator of a regulated small MS4 is out of compliance with the conditions of
1053 this permit.

1054 1. The operator shall update its MS4 Program Plan to include measurable goals,
1055 schedules, and strategies to ensure MS4 Program consistency with the TMDL
1056 within 18-months of permit coverage; or, within 18-months of the effective date of
1057 any reopening of this permit to include wasteloads allocated to the regulated
1058 small MS4 after issuance of permit coverage.

1059 2. The measurable goals, schedules, strategies, and other best management
1060 practices (BMPs), required in an updated MS4 Program Plan to assure MS4
1061 Program consistency with an approved TMDL for the pollutant identified in a
1062 WLA are, at a minimum:

1063 a The operator shall develop a list of its current ordinances and legal
1064 authorities, policies, plans, procedures and contracts implemented as part of
1065 the MS4 Program that are applicable to reducing the pollutant identified in a
1066 WLA.

1067 b. The operator shall evaluate existing ordinances and legal authorities,
1068 policies, plans, procedures and contracts of the existing MS4 Program to
1069 determine the effectiveness of the MS4 Program to address reduction of the
1070 pollutant identified in the WLA. The evaluation shall identify any weakness or
1071 limitation in the MS4 Program to reduce the pollutant identified in the WLA in
1072 a manner consistent with the TMDL.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

c. The operator shall develop a schedule to implement procedures and strategies to address the MS4 Program weaknesses including a timetable to update the existing ordinances and legal authorities, policies, plans, procedures and contracts to ensure consistency with the TMDL. When possible, source elimination shall be prioritized over load reduction.

3 The operator shall implement the schedule established in Section 1.B.2.c.

4. The operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the pollutant identified in the WLA. This may include additional employee training regarding the sources and methods to eliminate and minimize the discharge of the pollutant identified in the WLA.

5. The operator is encouraged to participate as a stakeholder in the development of any Implementation Plans developed to address the TMDL and shall incorporate applicable best management practices (BMPs) identified in the TMDL implementation plan in their MS4 Program Plan.

6. The operator shall develop and implement outfall reconnaissance procedures to identify and eliminate the discharge of the pollutant identified in the WLA from anthropogenic activities. The operator shall annually conduct reconnaissance on a minimum of 15% of its known MS4 outfalls discharging to the surface water for which the WLA has been assigned. Reconnaissance shall be performed on all outfalls at least once during this permit period. The Department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments", EPA cooperative agreement number X-82907801-0, for guidance in implementing its outfall reconnaissance procedures.

7. The operator shall evaluate all properties owned or operated by the MS4 operator for potential sources of the pollutant identified in the WLA. Within three years of updating the MS4 Program Plan, the operator shall conduct a site evaluation and characterize the runoff for those properties where it determines that the pollutant identified in the WLA is currently stored, or has been transferred, transported or historically disposed of in a manner that would expose it to precipitation in accordance with the following schedule:

a. The operator shall collect a total of two samples from a representative outfall for each identified municipal property during each of the following six-month periods: October through March, and April through September.

b. All collected samples shall be grab samples and collected within the first thirty minutes of a runoff producing event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the property. The required 72-hour storm event interval may also be waived where the operator documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. Analytical methods shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

- 1119 (EPA). Where an approved 40 CFR Part 136 method does not exist, the
1120 operator must use a method consistent with the TMDL.
- 1121 c. For properties where there is found to be a discharge of the pollutant
1122 identified in the WLA, the operator shall develop and implement a schedule to
1123 minimize the discharge of the pollutant identified in the WLA in a manner
1124 consistent with the approved TMDL
- 1125 8. The operator shall conduct an annual characterization that estimates the
1126 volume of stormwater discharged, in gallons, and the quantity of pollutant
1127 identified in the WLA, in a unit consistent with the WLA, discharged by the
1128 regulated small MS4.
- 1129 9. As part of the annual evaluation, the operator shall update the MS4 Program
1130 Plan to include any new information regarding the TMDL in order to ensure
1131 consistency with the TMDL.
- 1132 10. Along with reporting requirements in Section II. E., the operator shall include
1133 the following with each annual report:
- 1134 a. Copies of any updates to the MS4 Program Plan completed during the
1135 reporting cycle and any new information regarding the TMDL in order to
1136 evaluate its ability to assure the consistency of its discharge with the WLA.
- 1137 b. The estimate of the volume of stormwater discharged, in gallons, and the
1138 quantity of pollutant identified in the WLA, in a unit consistent with the WLA
1139 discharged by the regulated small MS4 for each WLA.

SECTION II

STORMWATER MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM

- 1144 A. The ~~permittee~~ operator of a regulated small MS4 must develop, implement, and
1145 enforce a ~~stormwater management MS4 program~~ Program designed to reduce the
1146 discharge of pollutants from the regulated small MS4 to the maximum extent practicable
1147 (MEP), to protect water quality, to improve waters that the regulated small MS4
1148 discharges into that are identified as impaired in the 2006 305(b)/303(d) Water Quality
1149 Assessment Integrated Report (<http://www.deq.state.va.us/wqa/ir2006.html>), and to
1150 satisfy the appropriate water quality requirements of the Clean Water Act and
1151 regulations and the Virginia Stormwater Management Act and attendant regulations. The
1152 ~~stormwater management MS4 program~~ Program must include the minimum control
1153 measures described in paragraph B of this section. For purposes of this section,
1154 narrative effluent limitations requiring implementation of best management practices
1155 (BMPs) are generally the most appropriate form of effluent limitations when designed to
1156 satisfy technology requirements (including reductions of pollutants to the maximum
1157 extent practicable) and to protect water quality. Implementation of best management
1158 practices consistent with the provisions of the ~~stormwater management MS4 program~~
1159 Program required pursuant to this ~~Part~~ section constitutes compliance with the standard
1160 of reducing pollutants to the "maximum extent practicable-" and protects water quality in
1161 the absence of a TMDL wasteload allocation. The requirements of this section and those
1162 special conditions set out in Section I B also apply where a WLA is applicable. The
1163 ~~stormwater management program must be developed and implemented in accordance~~
1164 ~~with the Act by July 1, 2006, or by a later date if specified by the board.~~

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

Within 180 days of the effective date of this general permit, the operator shall review its existing MS4 Program Plan and submit a schedule to develop and implement programs to meet the conditions established by this permit. For operators of regulated small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.

Prior to submittal of the MS4 Program Plan and proposed schedule to the department, each operator must provide public notification and provide for receipt of public comments. Public notice shall allow at least 30 days for public comment. Public notice shall be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Copies of all comments received shall be submitted with the proposed schedule to the department.

B. Minimum control measures.

1. Public education and outreach on stormwater impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff. The operator may review the Environmental Protection Agency (EPA) publication entitled "Getting in Step: A Guide for Conducting Watershed Outreach Campaigns", publication number EPA 841-B-03-002, for guidance in developing a public education program.

The operator shall identify, schedule, implement, evaluate and modify, as necessary, best management practices (BMPs) to meet the following public education and outreach measurable goals:

a. Increased individual and household knowledge about the steps that they can take to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

b. Increased public employee, business, and general public knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications;

c. Increased individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean up projects, programs, groups, meetings and other opportunities for public involvement;

d. Increased range of diverse strategies to target audiences specific to the area serviced by the regulated small MS4;

e. Improved outreach program to address viewpoints and concerns of target audiences, particularly minority and disadvantaged audiences as well as special concerns relating to children; and

f. Targeted strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

2. Public involvement/participation. At a minimum, comply with applicable state, tribal, and local public notice requirements when implementing the ~~stormwater management~~ MS4 program Program.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

- 1210 The operator shall identify, schedule, implement, evaluate and modify, as
1211 necessary, best management practices (BMPs) to meet the following public
1212 involvement/participation measurable goals:
- 1213 a. Promote the availability of the operator's MS4 Program Plan for public
1214 review and comment. Provide access to or copies of the MS4 Program Plan
1215 upon request of interested parties in compliance with all applicable freedom
1216 of information regulations;
- 1217 b. Provide access to or copies of the annual report upon request of interested
1218 parties in compliance with all applicable freedom of information regulations;
1219 and
- 1220 c. Participate, through promotion, sponsorship, or other involvement, in local
1221 activities aimed at increasing public participation to reduce stormwater
1222 pollutant loads and improve water quality.
- 1223 3. Illicit discharge detection and elimination. The MS4 Program shall:
- 1224 a. Develop, implement and enforce a program to detect and eliminate illicit
1225 discharges, as defined at 4VAC50-60-1200 4VAC50-60-10, into the regulated
1226 small MS4. The Department recommends that the operator review the
1227 publication entitled "Illicit Discharge Detection and Elimination: A Guidance
1228 Manual for Program Development and Technical Assessments",
1229 Environmental Protection Agency (EPA) cooperative agreement number X-
1230 82907801-0, for guidance in implementing and evaluating its illicit discharge
1231 detection and elimination program;
- 1232 b. (1)-Develop, if not already completed, and maintain, an updated a storm
1233 sewer system map, showing the location of all major known outfalls of the
1234 regulated small MS4 including those physically interconnected to a regulated
1235 MS4, the associated HUCs, and the names and location locations of all
1236 impaired surface waters that receive discharges from those outfalls. The
1237 operator shall also estimate the acreage within the regulated small MS4
1238 discharging to each HUC and impaired water;
- 1239 (2)c. To the extent allowable under state, tribal or local law or other regulatory
1240 mechanism, effectively prohibit, through ordinance, or other regulatory
1241 mechanism, nonstormwater discharges into the storm sewer system and
1242 implement appropriate enforcement procedures and actions;
- 1243 The following categories of nonstormwater discharges or flows (i.e., illicit
1244 discharges) must be addressed only if they are identified by the operator, the
1245 State Water Control Board, or by the board as significant contributors of
1246 pollutants to the regulated small MS4: water line flushing, landscape
1247 irrigation, diverted stream flows, rising ground waters, uncontaminated
1248 ground water infiltration, uncontaminated pumped ground water, discharges
1249 from potable water sources, foundation drains, air conditioning condensation,
1250 irrigation water, springs, water from crawl space pumps, footing drains, lawn
1251 watering, individual residential car washing, flows from riparian habitats and
1252 wetlands, dechlorinated swimming pool discharges, street wash water,
1253 discharges or flows from fire fighting activities, and flows that have been
1254 identified in writing by the Department of Environmental Quality as de minimis

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

- 1255 discharges that are not significant sources of pollutants to state waters and
1256 not requiring a VPDES permit;
- 1257 ~~(3)d. Develop and implement a plan~~ procedures to detect and address
1258 nonstormwater discharges, including illegal dumping, to the ~~system~~ regulated
1259 small MS4; and
- 1260 ~~(4) Inform public employees, businesses, and the general public of hazards~~
1261 ~~associated with illegal discharges and improper disposal of waste.~~
- 1262 ~~c. The following categories of nonstormwater discharges or flows (i.e., illicit~~
1263 ~~discharges) must be addressed only if they are identified by the permittee or~~
1264 ~~by the board as significant contributors of pollutants to the small MS4: water~~
1265 ~~line flushing, landscape irrigation, diverted stream flows, rising ground waters,~~
1266 ~~uncontaminated ground water infiltration, uncontaminated pumped ground~~
1267 ~~water, discharges from potable water sources, foundation drains, air~~
1268 ~~conditioning condensation, irrigation water, springs, water from crawl space~~
1269 ~~pumps, footing drains, lawn watering, individual residential car washing, flows~~
1270 ~~from riparian habitats and wetlands, dechlorinated swimming pool~~
1271 ~~discharges, street wash water, and discharges or flows from fire fighting~~
1272 ~~activities.~~
- 1273 e. Prevent or minimize to the maximum extent practicable, the discharge of
1274 hazardous substances or oil in the stormwater discharge(s) from the
1275 regulated small MS4. In addition, the MS4 Program must be reviewed to
1276 identify measures to prevent the recurrence of such releases and to respond
1277 to such releases, and the program must be modified where appropriate. This
1278 permit does not relieve the operator or the responsible part(ies) of any
1279 reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001)
1280 and 40 CFR Part 302 (2001) or §62.1-44.34:19 of the Code of Virginia;
- 1281 f. Track the number of illicit discharges identified, provide narrative on how
1282 they were eliminated, and submit the information in accordance with Section
1283 II.E.2; and
- 1284 g. Notify, in writing, any downstream regulated MS4 to which the small
1285 regulated MS4 is physically interconnected of the small regulated MS4's
1286 connection to that system.
- 1287 4. Construction site stormwater runoff control.
- 1288 ~~a. Develop~~ The operator shall develop, implement, and enforce ~~a program~~
1289 procedures to reduce pollutants in any stormwater runoff to the regulated
1290 small MS4 from construction activities that result in a land disturbance of
1291 greater than or equal to one acre or equal to or greater than 2,500 square
1292 feet in all areas of the jurisdictions designated as subject to the Chesapeake
1293 Bay Preservation Area Designation and Management Regulations adopted
1294 pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of
1295 stormwater discharges from construction activity disturbing less than one
1296 acre must be included in the program if that construction activity is part of a
1297 larger common plan of development or sale that would disturb one acre or
1298 more. ~~If the board waives requirements for stormwater discharges associated~~
1299 ~~with small construction activity in accordance with the definition in 4VAC50-~~

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

- 1300 ~~60-10, the permittee is not required to develop, implement, and/or enforce a~~
1301 ~~program to reduce pollutant discharges from such sites.~~
- 1302 b. The program procedures must include the development and
1303 implementation of, at a minimum:
- 1304 (1) An ordinance or other ~~regulatory~~ mechanism to require erosion and
1305 sediment controls, as well as sanctions to ensure compliance with the
1306 Erosion and Sediment Control Law and attendant regulations, to the extent
1307 allowable under state, tribal, or local law. Such ordinances and other
1308 mechanisms shall be updated as necessary;
- 1309 (2) Requirements for construction site operators to implement appropriate
1310 ~~erosion and sediment control best management practices~~ an erosion and
1311 sediment control plant that is consistent with the Erosion and Sediment
1312 Control Law and attendant regulations and other applicable requirements of
1313 state, tribal, or local law;
- 1314 (3) Requirements for construction site operators to ~~control waste such as~~
1315 ~~discarded building materials, concrete truck washout, chemicals, litter, and~~
1316 ~~sanitary waste at the construction site that may cause adverse impacts to~~
1317 ~~water quality; or procedures to ensure that construction site operators have~~
1318 ~~secured or will secure~~ authorization to discharge stormwater from
1319 construction activities under a VSMP construction permit for construction
1320 activities that result in a land disturbance of greater than or equal to one acre
1321 or equal to or greater than 2,500 square feet in all areas of the jurisdictions
1322 designated as subject to the Chesapeake Bay Preservation Area Designation
1323 and Management Regulations adopted pursuant to the Chesapeake Bay
1324 Preservation Act. Additionally, reduction of stormwater discharges from
1325 construction activity disturbing less than one acre must be included in the
1326 procedures if that construction activity is part of a larger common plan of
1327 development or sale that would disturb one acre or more;
- 1328 (4) ~~Procedures for site plan review which incorporate consideration of~~
1329 ~~potential water quality and quantity impacts and ensures compliance with the~~
1330 ~~Chesapeake Bay Preservation Act as implemented in Tidewater Virginia~~
1331 ~~localities;~~
- 1332 (5)(4) Procedures for receipt and consideration of information submitted by
1333 the public; and
- 1334 (6)(5) Procedures for site inspection and enforcement of control measures.
- 1335 b. The operator shall ensure that plan reviewers, inspectors, program
1336 administrators and construction site operators obtain the appropriate
1337 certifications as required under the Erosion and Sediment Control Law;
- 1338 c. ~~Track~~ The operator shall track regulated land-disturbing activities and
1339 submit the following information ~~for the reporting period with the annual report~~
1340 ~~required in accordance with~~ Section II E 2:
- 1341 (1) Total number of regulated land-disturbing activities; and
1342 (2) Total disturbed acreage.
- 1343 5. Post-construction stormwater management in new development and
1344 redevelopment.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

a. ~~Develop~~ The operator shall develop, implement, and enforce a program procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4. The program procedures must ensure that controls are in place that would prevent or minimize water quality and quantity impacts in accordance with this section.

b. The operator shall:

(1) Develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for your the local community. The operator shall encourage the use of low impact development where determined appropriate by the operator;

(2) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to ensure compliance with the Virginia Stormwater Management Act and attendant regulations, and to the extent allowable under state, tribal or local law. Such ordinances and other mechanisms shall be updated as necessary; and

(3) Require construction site operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for new development and redevelopment projects that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the procedures if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

~~(3)~~(4) Ensure adequate long-term operation and maintenance by the owner of BMPs structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement or some other mechanism that achieves an equivalent objective. The operator shall additionally develop, through the maintenance agreement or other method, a mechanism for enforcement of maintenance responsibilities by the operator if they are neglected by the owner;

(5) Conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations;

(6) Track number of acres per HUC developed utilizing low impact development principles; and

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

~~(4)(7) If the MS4 discharges to the Chesapeake Bay watershed, track~~ Track all known permanent BMP's stormwater management facilities that discharge to the regulated small MS4 installed in the MS4 (structural and nonstructural), and submit the following information with the annual report required in accordance with Section II E 2:

(a) Type of BMP structural stormwater management facility installed as defined in the Virginia Stormwater Management Handbook;

(b) Geographic location (Hydrologic Unit Code HUC);

(c) Waterbody Where applicable, the impaired surface water that the BMP stormwater management facility is discharging into; and

(d) Number of acres treated to the nearest one-tenth acre;.

(e) Whether the BMP is inspected or maintained; and

(f) How often the BMP is maintained (quarterly, annually, etc.).

6. Pollution prevention/good housekeeping for municipal operations. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials ~~that are~~ including those available from EPA, state, tribe, or other organizations, the program ~~must~~ shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and ~~stormwater system~~ MS4 maintenance. The operator is encouraged to review the Environmental Protection Agency's (EPA's) National Menu of Stormwater Best Management Practices for ideas and strategies to incorporate into its program. The menu can be accessed at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.

a. The operator shall identify, implement, evaluate and modify, as necessary, best management practices (BMPs) to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:

(1) Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4;

(2) Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities;

(3) Waste materials shall be disposed of properly;

(4) Materials that are soluble or erodible shall be protected from exposure to precipitation;

(5) Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and

(6) For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of §10.1-104.4 of the Code of Virginia.

C. ~~Qualifying state, tribal or local program.~~ If an existing ~~qualifying local~~ program requires the implementation of one or more of the minimum control measures of Section

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

1435 II B, the ~~permittee~~ operator, with the approval of the board, may follow that ~~qualifying~~
1436 program's requirements rather than the requirements of Section II B. A ~~qualifying local~~
1437 program is that may be considered includes but is not limited to a local, state or tribal
1438 ~~municipal stormwater management~~ program that imposes, at a minimum, the relevant
1439 requirements of Section II B.

1440 The ~~permittee's~~ operator's ~~stormwater management program~~ MS4 Program Plan
1441 must shall identify and fully describe any ~~qualifying local~~ program that will be used to
1442 satisfy one or more of the minimum control measures of Section II B.

1443 If the ~~qualifying local~~ program the ~~permittee~~ operator is using requires the approval of
1444 a third party, the program must be fully approved by the third party, or the ~~permittee~~
1445 operator must be working towards getting full approval. Documentation of the ~~qualifying~~
1446 ~~local~~ program's approval status, or the progress towards achieving full approval, must be
1447 included in the annual report required by Section II E 2.

1448 D. ~~Sharing responsibility.~~ The ~~permittee~~ operator may rely on another entity to satisfy
1449 the VSMP permit obligations to implement a minimum control measure if: (i) the other
1450 entity, in fact, implements the control measure; (ii) the particular control measure, or
1451 component thereof, is at least as stringent as the corresponding VSMP permit
1452 requirement; and (iii) the other entity agrees to implement the control measure on behalf
1453 of the ~~permittee~~ operator. The agreement between the parties must be documented in
1454 writing and retained by the ~~permittee~~ operator with the ~~Stormwater Management MS4~~
1455 Program Plan for the duration of this permit.

1456 In the annual reports that must be submitted under Section II E 2, the ~~permittee~~
1457 operator must specify that another entity is being relied on to satisfy some of the permit
1458 obligations.

1459 If the ~~permittee~~ operator is relying on another governmental entity regulated under
1460 4VAC50-60-380 to satisfy all of the permit obligations, including the obligation to file
1461 periodic reports required by Section II E 2, the ~~permittee~~ operator must note that fact in
1462 the registration statement, but is not required to file the periodic reports.

1463 The ~~permittee~~ operator remains responsible for compliance with the permit
1464 obligations if the other entity fails to implement the control measure (or component
1465 thereof).

1466 E. Evaluation and assessment.

1467 1. Evaluation.

1468 a. The ~~permittee~~ operator must annually evaluate;

1469 (i) program compliance,

1470 (ii) the appropriateness of the identified best management practices (BMPs),
1471 and

1472 (iii) progress towards achieving the identified measurable goals.

1473 b. The operator must evaluate its MS4 Program once during the permit cycle
1474 using the "Municipal Stormwater Program Evaluation Guidance",
1475 Environmental Protection Agency (EPA)-833-R-07-003. Such information
1476 shall be utilized when reapplying for permit coverage. Results of this
1477 evaluation shall be kept on file and made available during audits and
1478 inspections.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

2. Annual reports. The ~~permittee~~ operator must submit an annual report for the reporting period of July 1 through June 30 to the director by the ~~annual anniversaries of the date of coverage under this permit~~ the following October 1.

The reports ~~must~~ shall include:

a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

c. A summary of the stormwater activities the ~~permittee~~ operator plans to undertake during the next reporting cycle;

d. A change in any identified best management practices or measurable goals for any of the minimum control measures;

e. Notice that the ~~permittee~~ operator is relying on another government entity to satisfy some of the permit obligations (if applicable), ~~and~~

f. The approval status of any ~~qualifying local~~ programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs;

g. Information required pursuant to Section I.B.10.

h. The number of illicit discharges identified and the narrative on how they were eliminated pursuant to Section II.B.3.f;

i. Regulated land disturbing activities data tracked under Section II.B.4.c; and

j. All known permanent stormwater management facility data tracked under Section II.B.5.b.(6) and (7) submitted in a database format to be prescribed by the department. Upon filing of this list, subsequent reports shall only include those new stormwater management facilities that have been brought on line.

k. A list of any new or terminated signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures.

F. Program Plan modifications. The ~~department~~ board may require modifications to the ~~Stormwater Management MS4 Program Plan~~ as needed to address adverse impacts on receiving surface water quality caused, or contributed to, by discharges from the regulated small MS4. Modifications ~~requested~~ required by the ~~department~~ board shall be made in writing and set forth the time schedule to develop and implement the modification. The ~~permittee~~ operator may propose alternative program modifications and time schedules to meet the objective of the ~~requested~~ required modification. The ~~department~~ board retains the authority to require any modifications it determines are necessary.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

SECTION III

CONDITIONS APPLICABLE TO ALL VSMP PERMITS

~~NOTE: Monitoring is not required for this permit. If you choose to monitor your stormwater discharges or BMP's in support of your Stormwater Management Program, you must comply with the requirements of subsections A, B, and C, as appropriate.~~

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The ~~permittee~~ operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. ~~Records of monitoring information~~ Monitoring records/reports shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The ~~permittee~~ operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the ~~permittee~~ operator, or as requested by the board.

C. Reporting monitoring results.

1. The ~~permittee~~ operator shall submit the results of the monitoring required by this permit ~~not later than the 10th day of the month after monitoring takes place, with the annual report~~ unless another reporting schedule is specified elsewhere in this permit. ~~Monitoring results shall be submitted to the department's Urban Program's Section of the Division of Soil and Water Conservation.~~

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the ~~permittee~~ operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

1566 reporting of the data submitted in the DMR or reporting form specified by the
1567 department.

1568 4. Calculations for all limitations that require averaging of measurements shall
1569 utilize an arithmetic mean unless otherwise specified in this permit.

1570 D. Duty to provide information. The ~~permittee~~ operator shall furnish to the
1571 department, within a reasonable time, any information that the board may request to
1572 determine whether cause exists for modifying, revoking and reissuing, or terminating this
1573 permit or to determine compliance with this permit. The board may require the ~~permittee~~
1574 operator to furnish, upon request, such plans, specifications, and other pertinent
1575 information as may be necessary to determine the effect of the wastes from his
1576 discharge on the quality of state surface waters, or such other information as may be
1577 necessary to accomplish the purposes of the CWA and Virginia Stormwater
1578 Management Act. The ~~permittee~~ operator shall also furnish to the department upon
1579 request, copies of records required to be kept by this permit.

1580 E. Compliance schedule reports. Reports of compliance or noncompliance with, or
1581 any progress reports on, interim and final requirements contained in any compliance
1582 schedule of this permit shall be submitted no later than 14 days following each schedule
1583 date.

1584 F. Unauthorized discharges. Except in compliance with this permit, or another permit
1585 issued by the board or State Water Control Board, it shall be unlawful for any person to:

1586 1. Discharge into state surface waters sewage, industrial wastes, other wastes,
1587 or any noxious or deleterious substances; or

1588 2. Otherwise alter the physical, chemical or biological properties of such state
1589 surface waters and make them detrimental to the public health, or to animal or
1590 aquatic life, or to the use of such waters for domestic or industrial consumption,
1591 or for recreation, or for other uses.

1592 G. Reports of unauthorized discharges. Any ~~permittee~~ operator of a regulated small
1593 MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other
1594 wastes or any noxious or deleterious substance or a hazardous substance or oil in an
1595 amount equal to or in excess of a reportable quantity established under either 40 CFR
1596 Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) that occurs during
1597 a 24-hour period into or upon state surface waters in violation of Section III F; or who
1598 discharges or causes or allows a discharge that may reasonably be expected to enter
1599 state surface waters in violation of Section III F, shall notify the Department of
1600 Environmental Quality ~~and the Department of Conservation and Recreation~~ of the
1601 discharge immediately upon discovery of the discharge, but in no case later than within
1602 24 hours after said discovery. A written report of the unauthorized discharge shall be
1603 submitted to the Department of Environmental Quality and the Department of
1604 Conservation and Recreation, within five days of discovery of the discharge. The written
1605 report shall contain:

1606 1. A description of the nature and location of the discharge;

1607 2. The cause of the discharge;

1608 3. The date on which the discharge occurred;

1609 4. The length of time that the discharge continued;

1610 5. The volume of the discharge;

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

- 1611 6. If the discharge is continuing, how long it is expected to continue;
- 1612 7. If the discharge is continuing, what the expected total volume of the discharge
- 1613 will be; and
- 1614 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of
- 1615 the present discharge or any future discharges not authorized by this permit.
- 1616 Discharges reportable to the Department of Environmental Quality and the
- 1617 Department of Conservation and Recreation under the immediate reporting
- 1618 requirements of other regulations are exempted from this requirement.
- 1619 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary
- 1620 discharge including a bypass or upset should occur from a facility and the discharge
- 1621 enters or could be expected to enter state surface waters, the permittee operator shall
- 1622 promptly notify, in no case later than within 24 hours, the Department of Environmental
- 1623 Quality and the Department of Conservation and Recreation by telephone after the
- 1624 discovery of the discharge. This notification shall provide all available details of the
- 1625 incident, including any adverse affects on aquatic life and the known number of fish
- 1626 killed. The permittee operator shall reduce the report to writing and shall submit it to the
- 1627 Department of Environmental Quality and the Department of Conservation and
- 1628 Recreation within five days of discovery of the discharge in accordance with Section III I
- 1629 2. Unusual and extraordinary discharges include but are not limited to any discharge
- 1630 resulting from:
- 1631 1. Unusual spillage of materials resulting directly or indirectly from processing
- 1632 operations;
- 1633 2. Breakdown of processing or accessory equipment;
- 1634 3. Failure or taking out of service some or all of the facilities; and
- 1635 4. Flooding or other acts of nature.
- 1636 I. Reports of noncompliance. The permittee operator shall report any noncompliance
- 1637 which may adversely affect state surface waters or may endanger public health.
- 1638 1. An oral report shall be provided within 24 hours to the Department of
- 1639 Environmental Quality and the Department of Conservation and Recreation from
- 1640 the time the permittee operator becomes aware of the circumstances. The
- 1641 following shall be included as information ~~that~~ which shall be reported within 24
- 1642 hours under this paragraph:
- 1643 a. Any unanticipated bypass; and
- 1644 b. Any upset which causes a discharge to surface waters.
- 1645 2. A written report shall be submitted within five days and shall contain:
- 1646 a. A description of the noncompliance and its cause;
- 1647 b. The period of noncompliance, including exact dates and times, and if the
- 1648 noncompliance has not been corrected, the anticipated time it is expected to
- 1649 continue; and
- 1650 c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of
- 1651 the noncompliance.
- 1652 The board or its designee may waive the written report on a case-by-case
- 1653 basis for reports of noncompliance under Section III I if the oral report has

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

been received within 24 hours and no adverse impact on ~~state~~ surface waters has been reported.

3. The ~~permittee~~ operator shall report all instances of noncompliance not reported under Sections III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Section III I 2.

NOTE: The immediate (within 24 hours) reports required to be reported to the Department of Environmental Quality in Sections III G, H and I may be made to the ~~department's Urban Program's Section of the Division of Soil and Water Conservation~~ appropriate Department of Environmental Quality's Regional Office Pollution Response Program as found at <http://www.deq.virginia.gov/prep/homepage.html#>. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the ~~permittee~~ operator becomes aware ~~that it failed of a failure~~ to submit any relevant facts in a permit application, or submitted submittal of incorrect information in a permit application or in any report to the department or the Department of Environmental Quality, it shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The ~~permittee~~ operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The ~~permittee~~ operator plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under §306 of Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with §306 of Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal;

b. The operator plans alteration or addition ~~that could would~~ significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit; or

2. The ~~permittee~~ operator shall give advance notice to the department of any planned changes in the permitted facility or activity; ~~that~~ which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

1699 principal business function, or any other person who performs similar policy-
1700 or decision-making functions for the corporation, or (ii) the manager of one or
1701 more manufacturing, production, or operating facilities, provided the manager
1702 is authorized to make management decisions which govern the operation of
1703 the regulated facility including having the explicit or implicit duty of making
1704 major capital investment recommendations, and initiating and directing other
1705 comprehensive measures to assure long term ~~environmental~~ compliance with
1706 environmental laws and regulations; the manager can ensure that the
1707 necessary systems are established or actions taken to gather complete and
1708 accurate information for permit application requirements; and where authority
1709 to sign documents has been assigned or delegated to the manager in
1710 accordance with corporate procedures;

1711 b. For a partnership or sole proprietorship: by a general partner or the
1712 proprietor, respectively; or

1713 c. For a municipality, state, federal, or other public agency: By either a
1714 principal executive officer or ranking elected official. For purposes of this
1715 subsection, a principal executive officer of a public agency includes:

1716 (1) The chief executive officer of the agency, or
1717 (2) A senior executive officer having responsibility for the overall operations of
1718 a principal geographic unit of the agency.

1719 2. Reports, etc. All reports required by permits, and other information requested
1720 by the board shall be signed by a person described in Section III K 1, or by a duly
1721 authorized representative of that person. A person is a duly authorized
1722 representative only if:

1723 a. The authorization is made in writing by a person described in Section III K
1724 1;

1725 b. The authorization specifies either an individual or a position having
1726 responsibility for the overall operation of the regulated facility or activity such
1727 as the position of plant manager, operator of a well or a well field,
1728 superintendent, position of equivalent responsibility, or an individual or
1729 position having overall responsibility for environmental matters for the
1730 ~~company~~ operator. (A duly authorized representative may thus be either a
1731 named individual or any individual occupying a named position.); and

1732 c. The written authorization is submitted to the department.

1733 3. Changes to authorization. If an authorization under Section III K 2 is no longer
1734 accurate because a different individual or position has responsibility for the
1735 overall operation of the facility, a new authorization satisfying the requirements of
1736 Section III K 2 shall be submitted to the department prior to or together with any
1737 reports, or information to be signed by an authorized representative.

1738 4. Certification. Any person signing a document under Sections III K 1 or 2 shall
1739 make the following certification:

1740 "I certify under penalty of law that this document and all attachments were
1741 prepared under my direction or supervision in accordance with a system
1742 designed to assure that qualified personnel properly gather and evaluate the
1743 information submitted. Based on my inquiry of the person or persons who
1744 manage the system, or those persons directly responsible for gathering the

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

1745 information, the information submitted is, to the best of my knowledge and belief,
1746 true, accurate, and complete. I am aware that there are significant penalties for
1747 submitting false information, including the possibility of fine and imprisonment for
1748 knowing violations."

1749 L. Duty to comply. The permittee operator shall comply with all conditions of this
1750 permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater
1751 Management Act and the Clean Water Act, except that noncompliance with certain
1752 provisions of this permit may constitute a violation of the Virginia Stormwater
1753 Management Act but not the Clean Water Act. Permit noncompliance is grounds for
1754 enforcement action; for permit termination, revocation and reissuance, or modification; or
1755 denial of a permit renewal application.

1756 The permittee operator shall comply with effluent standards or prohibitions
1757 established under §307(a) of the Clean Water Act for toxic pollutants within the time
1758 provided in the regulations that establish these standards or prohibitions or standards for
1759 sewage sludge use or disposal, even if this permit has not yet been modified to
1760 incorporate the requirement.

1761 M. Duty to reapply. If the permittee operator wishes to continue an activity regulated
1762 by this permit after the expiration date of this permit, the permittee operator shall submit
1763 a new registration statement at least 90 days before the expiration date of the existing
1764 permit, unless permission for a later date has been granted by the board. The board
1765 shall not grant permission for registration statements to be submitted later than the
1766 expiration date of the existing permit.

1767 N. Effect of a permit. This permit does not convey any property rights in either real or
1768 personal property or any exclusive privileges, nor does it authorize any injury to private
1769 property or invasion of personal rights, or any infringement of federal, state or local law
1770 or regulations.

1771 O. State law. Nothing in this permit shall be construed to preclude the institution of
1772 any legal action under, or relieve the permittee operator from any responsibilities,
1773 liabilities, or penalties established pursuant to any other state law or regulation or under
1774 authority preserved by §510 of the Clean Water Act. Except as provided in permit
1775 conditions on "bypassing" (Section III U), and "upset" (Section III V) nothing in this
1776 permit shall be construed to relieve the permittee operator from civil and criminal
1777 penalties for noncompliance.

1778 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to
1779 preclude the institution of any legal action or relieve the permittee operator from any
1780 responsibilities, liabilities, or penalties to which the permittee operator is or may be
1781 subject under §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

1782 Q. Proper operation and maintenance. The permittee operator shall at all times
1783 properly operate and maintain all facilities and systems of treatment and control (and
1784 related appurtenances) ~~that~~ which are installed or used by the permittee operator to
1785 achieve compliance with the conditions of this permit. Proper operation and maintenance
1786 also includes effective plant performance, adequate funding, adequate staffing, and
1787 adequate laboratory and process controls, including appropriate quality assurance
1788 procedures. This provision requires the operation of back-up or auxiliary facilities or
1789 similar systems ~~that~~ which are installed by the permittee operator only when the
1790 operation is necessary to achieve compliance with the conditions of this permit.

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The ~~permittee~~ operator shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a ~~permittee~~ an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The ~~permittee~~ operator may allow any bypass to occur ~~that~~ which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the ~~permittee~~ operator knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The ~~permittee~~ operator shall submit notice of an unanticipated bypass as required in Section III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board or its designee may take enforcement action against a ~~permittee~~ an operator for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass ~~that~~ which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The ~~permittee~~ operator submitted notices as required under Section III U 2.

b. The board or its designee may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Section III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and

**Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit
Regulations**

September 19, 2007

1835 before an action for noncompliance, is not a final administrative action subject to
1836 judicial review.

1837 2. A ~~permittee~~ An operator who wishes to establish the affirmative defense of
1838 upset shall demonstrate, through properly signed, contemporaneous operating
1839 logs, or other relevant evidence that:

1840 a. An upset occurred and that the ~~permittee~~ operator can identify the cause(s)
1841 of the upset;

1842 b. The permitted facility was at the time being properly operated;

1843 c. The ~~permittee~~ operator submitted notice of the upset as required in Section
1844 III I; and

1845 d. The ~~permittee~~ operator complied with any remedial measures required
1846 under Section III S.

1847 3. In any enforcement proceeding the ~~permittee~~ operator seeking to establish the
1848 occurrence of an upset has the burden of proof.

1849 W. Inspection and entry. The ~~permittee~~ operator shall allow the director as the
1850 board's designee, or an authorized representative (including an authorized contractor
1851 acting as a representative of the administrator), upon presentation of credentials and
1852 other documents as may be required by law, to:

1853 1. Enter upon the ~~permittee's~~ operator's premises where a regulated facility or
1854 activity is located or conducted, or where records must be kept under the
1855 conditions of this permit;

1856 2. Have access to and copy, at reasonable times, any records that must be kept
1857 under the conditions of this permit;

1858 3. Inspect at reasonable times any facilities, equipment (including monitoring and
1859 control equipment), practices, or operations regulated or required under this
1860 permit; and

1861 4. Sample or monitor at reasonable times, for the purposes of assuring permit
1862 compliance or as otherwise authorized by the Clean Water Act and the Virginia
1863 Stormwater Management Act, any substances or parameters at any location.

1864 For purposes of this subsection, the time for inspection shall be deemed
1865 reasonable during regular business hours, and whenever the facility is
1866 discharging. Nothing contained herein shall make an inspection unreasonable
1867 during an emergency.

1868 X. Permit actions. Permits may be modified, revoked and reissued, or terminated for
1869 cause. The filing of a request by the ~~permittee~~ operator for a permit modification,
1870 revocation and reissuance, or termination, or a notification of planned changes or
1871 anticipated noncompliance does not stay any permit condition.

1872 Y. Transfer of permits.

1873 1. Permits are not transferable to any person except after notice to the
1874 department. Except as provided in Section III Y 2, a permit may be transferred by
1875 the ~~permittee~~ operator to a new owner or operator only if the permit has been
1876 modified or revoked and reissued, or a minor modification made, to identify the
1877 new ~~permittee~~ operator and incorporate such other requirements as may be
1878 necessary under the Virginia Stormwater Management Act and the Clean Water
1879 Act.

Draft Proposed Municipal Separate Storm Sewer System (MS4) General Permit Regulations

September 19, 2007

2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new permittee operator if:

a. The current permittee operator notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee operator and the proposed new permittee operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

FORMS

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1 (~~June 1980~~) (August 1990) (DCR 199-149).

Department of Conservation and Recreation Permit Application Fee Form, (DCR 199-145) (09/04).

VSMP General Permit Registration Statement for Construction Activity Stormwater Discharges, (DCR01), (DCR 199-146) (09/04).

VSMP General Permit Notice of Termination for Construction Activity Stormwater Discharges, (DCR01), (DCR 199-147) (09/04).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (~~DCR02~~) (VAR04), (DCR 199-148) (~~09/04~~) (09/07)